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Electricity Delivery and
Energy Reliability

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY

POWEREX CORP.

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OE Docket No. EA-145-F

**APPLICATION OF POWEREX CORP.
FOR RENEWAL OF AUTHORIZATION
TO TRANSMIT ELECTRIC ENERGY TO MEXICO**

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15 October 2018

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY**

**IN THE MATTER OF

POWEREX CORP.**

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OE Docket No. EA-145-F

**APPLICATION OF POWEREX CORP.
FOR RENEWAL OF AUTHORIZATION TO
TRANSMIT ELECTRIC ENERGY TO MEXICO**

Powerex Corp. ("Powerex"), pursuant to Section 202(e) of the Federal Power Act ("FPA"), 16 U.S.C. § 824a(e), and Subpart W of Part 205 of the regulations thereunder, 10 C.F.R. § 205.300, *et seq.*, hereby files its Application for Renewal of Authorization to export electricity from the United States to Mexico for a period of five years. In support of this Application, Powerex respectfully states as follows:

**I.
INTRODUCTION**

On May 30, 1997, the United States Department of Energy, Office of Fossil Energy ("DOE") issued Order No. EA-145 authorizing Powerex to export electric energy to Mexico as a power marketer for a two-year term ending May 30, 1999. In 1999, and again in 2001, in Order Nos. EA-145-A and EA-145-B, the DOE renewed Powerex's authority to export electric energy for an additional two-year term. Subsequently, on April 26, 2004, on February 19, 2009, and on February 19, 2014 in Orders No. EA-145-C, EA-145-D, and EA-145-E, the DOE renewed Powerex's export authorization for an additional five-year term. Powerex's current export authorization ends on February 19, 2019.

Powerex requests herein that it be authorized to export electricity from the United States ("US") to Mexico for an additional five-year period that would end five years after the effective date of such approved extension.

II. DESCRIPTION OF POWEREX

The exact legal name of Powerex is Powerex Corp. Powerex is a corporation organized under the *Business Corporations Act* of British Columbia, with its principal place of business at 666 Burrard Street, Suite 1300, Vancouver, British Columbia, Canada, V6C 2X8. As the wholly-owned marketing subsidiary of the British Columbia Hydro and Power Authority ("BC Hydro"),¹ a provincial Crown Corporation owned by the Government of British Columbia, Powerex is an instrumentality of a foreign state under the Foreign Sovereign Immunities Act.²

Powerex sells power at wholesale from a portfolio of resources, including capability from the BC Hydro system, the Canadian Entitlement made available under the Columbia River Treaty, and various other resources acquired from other sellers within the United States and Canada.³

III. COMMUNICATIONS

Communications regarding this application should be addressed to the following:

¹ BC Hydro is a public utility regulated by the British Columbia Utilities Commission (the "BCUC") under the Utilities Commission Act [RSBC, c.473].

² 28 U.S.C. § 1602, *et seq.*

³ Powerex's wholesale sales in the US are made pursuant to market-based rate authority originally granted by the Federal Energy Regulatory Commission ("FERC") on September 24, 1997, and most recently reaffirmed by Letter Order dated July 26, 2007. See *British Columbia Power Exchange Corp.*, 80 FERC 61,343 (1997); *British Columbia Power Exchange Corp.*, Letter order issued in Docket No. ER97-4024-012 (Sept 12, 2000); *Powerex Corp.*, Letter order issued in Docket No. ER01-48-002 (Oct. 30, 2003); *Powerex Corp.*, Letter order issued in Docket No. ER01-48-007 (July 26, 2007) (unpublished letter order); *Powerex Corp.*, Docket No. ER01-48-018 (Oct. 29, 2010) (unpublished letter order); *Powerex Corp.*, Docket Nos. ER10-3297-003, *et al.* (Aug. 29, 2014) (unpublished letter order); *Powerex Corp.*, Docket Nos. ER17-704-000, *et al.* (Jan. 25, 2018).

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IV. **JURISDICTION**

Pursuant to section 202(e) of the FPA, the Department of Energy's Office of Electricity Delivery and Energy Reliability is the sole agency with jurisdiction over the proposed export of electric energy to Mexico.

Powerex has obtained or will obtain all necessary Mexican federal and provincial authorizations to effect any proposed export that involves electricity sourced in Mexico. No other known federal, state or local government has jurisdiction over the actions to be taken under the authority sought in this Application.

V.
RENEWAL AUTHORIZATION, TECHNICAL DISCUSSION, AND ANALYSIS

Powerex respectfully submits that granting its renewal Application to export electric power acquired from Canadian and/or US generating sources on either a firm or interruptible basis to Mexico over international electric transmission facilities continues to meet the two-prong standard set out in section 202(e) of the FPA. Such sales would continue to be made in foreign commerce at the US – Mexico border. Transmission to the point of delivery will be arranged by Powerex over any of the international electric transmission facilities set out in Exhibit C.

Powerex will purchase the power to be exported to Mexico from BC Hydro or other Canadian utilities, electric utilities in the US, federal power marketing agencies, qualifying cogeneration and small power production facilities, independent power producers, and other sellers. That purchased power will be transmitted over third-party facilities in the US for delivery over an international transmission facility at the US – Mexico border. Powerex will be obtaining transmission service for exports to Mexico from US transmission providers in the Western Interconnection that are subject to FERC's open access transmission policies as prescribed in Order Nos. 888 and 890, including FERC's requirement that transmission providers have reciprocal access to the transmission facilities owned and operated by Powerex's parent, BC Hydro.⁴

Pursuant to section 202(e) of the FPA, before DOE grants authorization to export electricity, it first evaluates the impact of the export on the reliability of the US electric system. DOE approves an application to export electricity unless it

⁴ BC Hydro *operates*, manages, plans, constructs and maintains its transmission system, and administers the BC transmission system's OASIS and its open access transmission tariff, which is based on FERC's Order No. 890 *pro forma* tariff. BC Hydro's tariff gives US transmission customers non-discriminatory access to BC Hydro's transmission facilities for transmission into, out of, and across British Columbia. The administration of BC Hydro's transmission system is subject to the exclusive regulatory authority of the British Columbia Utilities Commission.

finds that "the proposed transmission would impair the sufficiency of electric supply within the United States," or that "the proposed transmission ... would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission." 16 U.S.C. § 824(e). In applying these criteria to requests for export authorizations submitted by electric power marketers such as Powerex, DOE has declined to follow a rigid application of the information filing requirements set forth in DOE's regulations and instead has used a flexible approach to account for the unique nature of power marketers.⁵

Specifically, with respect to the first criterion used to analyze applications to export electricity, Powerex does not own any electric generation or transmission facilities and, as a power marketer, does not hold a franchise or service territory or native load obligation. Moreover, none of Powerex's affiliates own electric transmission facilities that constitute part of the electricity delivery system in the US⁶ and Powerex is not affiliated with an entity that holds a franchise or service territory in the contiguous US.⁷ Thus, Powerex has no transmission "system" of its own on which its exports of power could have a reliability or stability impact.

As DOE has recognized, the "power purchased by a power marketer is, by definition, surplus to the needs of the selling entities" and "[w]ith no native load obligations, the power marketer is free to sell its power portfolio on the open market domestically or as an export."⁸ Thus, an export of electricity "occurring

⁵ See, e.g., *Morgan Stanley Capital Group Inc.*, No. EA-185-A-CN (Aug. 14, 2000); *NorAm Energy Servs., Inc.*, No. EA-105-CN (Aug. 16, 1996); *MidCon Power Servs. Corp.*, No. EA-114 (July 15, 1996); *USGen Power Servs.*, No. EA-112 (June 27, 1996); *CNG Power Servs. Corp.*, No. EA-110 (June 20, 1996); *Destec Power Servs., Inc.*, No. EA-113 (May 31, 1996).

⁶ BC Hydro owns submarine cables that connect Vancouver Island with the rest of BC and pass through approximately 7.5 miles of US territorial waters in the Strait of Georgia. These facilities do not interconnect with the electricity delivery system of the US. See Order No. PP-369 (Dec. 7, 2012).

⁷ A subsidiary of BC Hydro, the Tongass Power and Light Company supplies electricity to the town of Hyder, Alaska pursuant to a long-term agreement. Hyder is not interconnected with the electricity delivery system of the US and Powerex's exports of electricity will have no impact on the reliability or stability of service to Hyder.

⁸ Order No. EA-216-C at 2.

under such circumstances" would not impair the sufficiency of electric supply within the US.⁹

DOE has interpreted the second criterion used to analyze applications to export electricity "primarily as an issue of the operational reliability of the domestic electric transmission system."¹⁰ As noted above, Powerex does not own any electric power supply system in the US. Additionally, in making the necessary commercial arrangements and obtaining transmission capacity necessary to export electricity under the authorization requested herein, Powerex will comply with existing industry procedures for obtaining transmission capacity, including reserving transmission service in accordance with FERC's Open-Access Same-Time Information System ("OASIS") and scheduling delivery of the export with the appropriate Regional Transmission Organization(s) or Independent System Operator(s) and/or Balancing Authority Areas. Further, Powerex will schedule its exports in compliance with all applicable reliability criteria, standards and guides as are set out by the North American Electricity Reliability Corporation ("NERC"), or any successor organization, and regional reliability councils, and as are applied by domestic transmission providers. Additionally, Powerex will submit to DOE the reports the agency requires of marketers possessing export authorization.

In assessing this statutory requirement, the DOE has repeatedly concluded that the existing industry procedures for obtaining transmission capacity on the US's domestic transmission system provide adequate assurances that a particular export will not cause an operational reliability problem.

As noted above, Powerex is a power marketer, and does not own or operate a transmission system. Accordingly, Powerex does not have the ability to cause a violation of the terms and conditions contained in the existing authorizations associated with the international transmission facilities identified in

⁹ *Id.*

¹⁰ *Id.*

Exhibit C. Specifically, Powerex does not have the ability to cause total exports on Presidential Permit facilities to exceed the authorized instantaneous transmission rate.

VI. CONSISTENCY WITH LAWS

Authorization of the exports proposed by Powerex is consistent with NAFTA and US energy policy and will foster development of a more efficient and competitive North American energy market. Powerex will conduct all operations pursuant to this Authorization in accordance with the provisions of the FPA and pertinent rules, regulations and orders adopted or issued thereunder, and in conformity with the reliability criteria, standards and guidelines of the NERC, regional reliability councils, and balancing authorities, including any applicable regional transmission organizations or independent system operators. Compliance with these statutes, rules, regulations, and orders will ensure that the proposed transmission will not impede or tend to impede the regional coordination of electric utility planning or operation.

Powerex believes that DOE is not required to conduct an environmental assessment or an environmental impact statement in connection with this Application and that DOE's approval of this Application is eligible for categorical exclusion under Appendix B to Subpart D, paragraph B4.2 of the revised DOE regulations implementing the National Environmental Policy Act of 1969.

VII. EXHIBITS

The following Exhibits are attached hereto:

- | | |
|-------------------|--|
| <u>Exhibit A:</u> | Agreements
(Not applicable) |
| <u>Exhibit B:</u> | Legal Opinion of Powerex's Counsel |
| <u>Exhibit C:</u> | Transmission System Information
(Submitted in lieu of maps) |

- Exhibit D: Irrevocable Limited Power of Attorney
- Exhibit E: Statement of any Corporate Relationship or Existing Contract which in any way Relates to Control or Fixing of Rates for the Purchase, Sale or Transmission of Electric Energy.
(Not applicable)
- Exhibit F: Operating Procedures Regarding Available Capacity and Energy
(Not applicable)
- Exhibit G: Verification

VIII.
CONCLUSION

WHEREFORE, for the foregoing reasons, Powerex requests that DOE grant this Application as requested herein. Powerex is willing to provide any additional information DOE may require to expedite review and approval of this renewal Application.

Respectfully submitted,

/s/ Deanna E. King

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EXHIBIT A

**Agreements
(Not Applicable)**

EXHIBIT B

Opinion of Counsel

LEGAL OPINION

The following opinion is given in support of the Application of Powerex Corp. for Renewal of Authorization to Transmit Electric Energy to Mexico, dated October 15, 2018.

- 1) I am a barrister and solicitor at law, authorized to practice law in the Province of British Columbia.
- 2) I am employed as Legal Counsel for Powerex.
- 3) Powerex is duly incorporated, validly existing in good standing under the laws of the *Business Corporations Act* of British Columbia and I believe will take those actions required for it to do business authorized in the States in which it will operation; and
- 4) Powerex has full corporate power and authority to buy, sell, or act as a marketer in the sale and exportation of electric energy as requested in the Application.



Jay Ratzlaff
Chief Legal Officer
Powerex Corp.

EXHIBIT C

Transmission System Information

(submitted in lieu of maps)

**International Electric Transmission Facilities at the
U.S. – Mexico Border Authorized for Third-Party Use for
Powerex Corp. Exports to Mexico**

Present Owner	Location	Voltage	Presidential Permit No.
AEP Texas Central Company	Laredo, TX	138-kV 230-kV	PP-317 PP-317
	Brownsville, TX	138-kV 69-kV	PP-94 PP-94
	Eagle Pass, TX	138-kV	PP-219
Baja California Power, Inc.	Imperial Valley, CA	230-kV	PP-234-1 PP-234-2
Comision Federal de Electricidad	Falcon Dam, TX	138-kV	N/A
	Redford, TX	7.2-kV	PP-51
	Presidio, TX	13.8-kV	PP-03
El Paso Electric Company	Diablo, NM	115-kV	PP-92
	Ascarate, TX	115-kV	PP-48
Generadora del Desierto -- WAPA	San Luis, AZ	230-kV	PP-304
San Diego Gas & Electric	Miguel, CA	230-kV	PP-68
	Imperial Valley, CA	230-kV	PP-79
Sharyland Utilities, Inc.	McAllen, TX	138-kV	PP-285

EXHIBIT D

Irrevocable Limited Power of Attorney

IRREVOCABLE LIMITED POWER OF ATTORNEY

This IRREVOCABLE LIMITED POWER OF ATTORNEY is made October ____, 2018 by Powerex Corp. (the "Principal"), a corporation organized and existing under the *Business Corporations Act* of British Columbia, with its headquarters at 666 Burrard Street, Suite 1300, Vancouver, British Columbia, Canada, V6C 2X8.

1. Appointment. The Principal does hereby appoint Ms. Deanna E. King, whose principal place of business is at Bracewell LLP, 111 Congress Avenue, Suite 2300, Austin, Texas, 78701, as the Principal's true and lawful agent and attorney-in-fact ("Attorney-in-fact") for the limited purpose hereinafter set out.
2. Scope of Authority. The Attorney-in-fact shall have the limited power and authority to receive service of process for any and all matters relating to Principal's reporting requirements to the Department of Energy under the Principal's Authority to Transmit Electric Energy to Mexico granted by the United States Department of Energy pursuant to OE Docket No. EA-145-F, for the term of that authorization.
3. Irrevocability. This Power of Attorney is irrevocable by the Principal.

IN WITNESS WHEREOF, the Principal has caused this Power of Attorney to be duly executed on this 15th day of October 2018.

POWEREX CORP.

By: 

Name: Mike MacDougall
Title: VP, IT & Trade Policy

This instrument was acknowledged before me on the 15th day of October 2018 by Mike MacDougall at Vancouver, BC.

By: 

Jay Ratzlaff
Chief Legal Officer

My Commission does not expire.

EXHIBIT E

**Statement of any Corporate Relationship or Existing Contract which
in any way Relates to Control or Fixing of Rates for the Purchase,
Sale or Transmission of Electric Energy
(Not Applicable)**

EXHIBIT F

**Operating Procedures Regarding Available Capacity and Energy
(Not Applicable)**

EXHIBIT G

Verification


VERIFICATION OF APPLICATION

I, Mike MacDougall, having knowledge of the matters set forth in the above Application of Powerex Corp. for Renewal of Authorization to Transmit Electric Energy to Mexico, hereby verify that the contents thereof are true and correct to the best of my knowledge and belief.



Mike MacDougall
VP, IT & Trade Policy
Powerex Corp.

SUBSCRIBED AND SWORN before me, a notary public in and for the Province of British Columbia, this 15th day of October 2018.



Jay Ratzlaff
Chief Legal Officer

My Commission does not expire.



Supply. Flexibility. Commitment.

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800 220 4907 TOLL FREE
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October 15, 2018

Department of Energy
Office of Electricity Delivery and Energy Reliability
1000 Independence Ave. S.W.
Washington, D.C.
20585

RE: Renewal Application for Authorization to Transmit Electric Energy to Mexico

Dear Sir or Madame,

Enclosed for filing on behalf of Powerex Corp. ("Powerex") is an original and 5 copies of an Application for Renewal of Authorization to export electricity from the United States to Mexico. Also enclosed is a check payable to the Treasurer of the United States in the amount of \$500.00 as the filing fee for this application.

Please contact me if you have any questions regarding this application.

Sincerely,

A handwritten signature in cursive script, appearing to read "Connor Curson".

Connor Curson
Trade Policy

Phone: 604-891-6028
Fax: 604-891-5006
E-mail: connor.curson@powerex.com

